

MEMORANDUM

September 19, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: LAURA E. INLOW
Lewis, Brisbois, Bisgaard & Smith

MILLICENT L. ROLON
Principal Deputy County Counsel
Law Enforcement Division

RE: Jose Castro v. County of Los Angeles
Long Beach Superior Court Case No. NC 034931

DATE OF
INCIDENT: January 10, 2002

AUTHORITY
REQUESTED: \$42,500


COUNTY
DEPARTMENT: Public Defender


CLAIMS BOARD ACTION:

☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on October 3, 2005

SUMMARY

This is a recommendation to settle for \$42,500 the lawsuit filed by Jose Castro alleging legal malpractice on the part of the Los Angeles County Public Defender.

LEGAL PRINCIPLES

An attorney may be found liable for professional malpractice if the legal work he or she provides falls below the professional standard of care for attorneys practicing in the same field and causes damage to the person he or she is representing.

A public entity is responsible for the negligent and intentional acts of its employees, when the acts are done in the course and scope of employment.

SUMMARY OF FACTS

On October 30, 1992, Jose Castro pled guilty to statutory rape in violation of Penal Code section 261.5, and was sentenced to one year in county jail and three years' formal probation, and was ordered to register as a sex offender. Although the Court ordered Mr. Castro to register as a sex offender, it failed to state on the record the necessary findings to support such a requirement. Mr. Castro was represented by a Deputy Public Defender.

In November 2001, Mr. Castro was charged with violating Penal Code section 290(G)(2) for failing to register as a sex offender as required by his previous sentence. Mr. Castro was again represented by a Deputy Public Defender. On January 10, 2002, Mr. Castro pled guilty to violating Penal Code section 290(G)(2) and was sentenced to sixteen months in State prison. He was released on parole after serving eight months of his sentence.

After he was released, Mr. Castro learned that his initial conviction for violation of Penal Code section 261.5 was not automatically a registerable offense, and that the Court had failed to make the requisite findings to support a requirement that Mr. Castro register as a sex offender. Therefore, he should not have served eight months in State prison for failing to register as a sex offender.

DAMAGES

Mr. Castro alleges that he served eight months in State prison and served some additional period of time for a parole violation pursuant to the same sentence. Further, Mr. Castro alleges severe emotional distress and the loss of his opportunity to become a United States citizen.

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Loss of earnings	\$ 25,000
Pain and suffering	<u>\$ 150,000</u>
Total	<u>\$ 175,000</u>

The settlement calls for the County to pay \$42,500 to Mr. Castro for all of his claims for damages, costs and attorney's fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

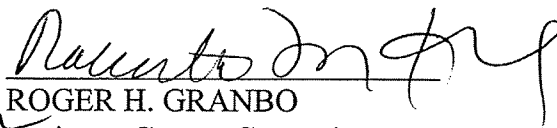
Expenses incurred by the County in defense of this matter are attorney's fees of \$8,820 and \$5,534 in costs.

EVALUATION

This is a case of probable liability. In 1992, Penal Code section 261.5 was not an enumerated crime that triggered registration as a sexual offender. Since the trial judge did not state in the record the necessary findings to support the order requiring him to register as a sex offender, Mr. Castro should not have been required to serve the eight-month sentence for failing to register. A reasonable settlement at this time will save further litigation costs and avoid a verdict which could exceed the proposed settlement.

We join with our third-party administrator, Carl Warren and Company, and our private counsel, Lewis, Brisbois, Bisgaard & Smith in recommending a settlement of this matter in the amount of \$42,500. The Public Defender concurs in this settlement recommendation.

APPROVED:


for ROGER H. GRANBO
Assistant County Counsel
Law Enforcement Services Division

MLR:deb